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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/028,118	12/21/2001	Robert Harvey Kane	US010688	3122
24737	7590	11/30/2004	EXAMINER	
PHILIPS INTELLECTUAL PROPERTY & STANDARDS			CURTIS, CRAIG	
P.O. BOX 3001			ART UNIT	
BRIARCLIFF MANOR, NY 10510			PAPER NUMBER	
			2872	

DATE MAILED: 11/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/028,118	<b>Applicant(s)</b> KANE, ROBERT HARVEY	
	<b>Examiner</b> Craig Curtis	<b>Art Unit</b> 2872	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 September 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 8-13 is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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## **DETAILED ACTION**

### ***Disposition of the Instant Application***

- In view of Applicant's Appeal Brief filed on 9 September 2004, **PROSECUTION IS HEREBY REOPENED**. New grounds of rejection are set forth below.

To avoid abandonment of the application, Appellant must exercise one of the following two options:

- (1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,
- (2) request reinstatement of the appeal.

If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132), or other evidence will be permitted. *See* 37 CFR 1.193(b)(2).

- Claims 1-13 are presently pending in the instant application.

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## ***Claim Rejections - 35 USC 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. **Claims 1 and 2 are rejected under 35 U.S.C. 103(a) as being over Silverstein et al. (6,714,350 B2) in view of Nakabayashi (6,523,963 B2) and Nakano et al. (JP410208284 A).**

With regard to claim 1, Silverstein et al. discloses the invention as claimed--[a] light polarizing device (400 in, e.g., Fig. 5; also see column 11, lines 24-43) comprising: a polarizing element (*id.*) having an optically transparent substrate (405), an environmentally sensitive polarizing element on said substrate (*viz.*, sub-wavelength wires 430)—**EXCEPT FOR** an optically transparent cover sheet sealed to said substrate and forming a sealed enclosure surrounding the polarizing element, the enclosure having a non-reactive atmosphere to protect the polarizing element from the ambient environment.

Nakabayashi, however, teaches a transparent cover sheet (*i.e.*, 3 & 7 in, e.g., Fig. 1B) sealed to a substrate (either or both 4 & 8) and forming a sealed enclosure surrounding an optical element (see Fig. 1B; also see column 3, lines 66-67—column 4, lines 1-7: *esp.* lines 4-7), while Nakano et al. disclose an enclosure (41, 42, and 43 in Fig. 1) having a non-reactive atmosphere (see SOLUTION ¶, lines 10-12, in English abstract: "...by an inert gas such as nitrogen.") to protect said optical element

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from the ambient environment (see PROBLEM TO BE SOLVED ¶ in English abstract). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the light-polarizing device of **Silverstein et al.** such that it further comprise a transparent cover sheet sealed said substrate thereby forming a sealed enclosure surrounding an optical element, said enclosure having a non-reactive atmosphere to protect the double-sided wire grid polarizer element of **Silverstein et al.** from the ambient environment, in light of the respective teachings of **Nakabayashi** and **Nakano et al.** set forth hereinbefore, for at least the purpose of protecting said polarizing element from the ambient environment.

With regard to claim 2, the polarizing element of the combination is a wire-grid polarizing element. See 400 in **Silverstein et al.**

2. Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being over **Silverstein et al.** (6,714,350 B2) in view of **Nakabayashi** (6,523,963 B2) and **Nakano et al.** (JP410208284 A), as applied above to claims 1 and 2, and further in view of **Ray et al.** (5,701,008).

With regard to claim 3, the combination discloses as set forth above the invention as claimed EXCEPT FOR a plurality of spacers distributed around the periphery of said device and supporting said cover sheet on said substrate above the element, and a sealant extending around the periphery of said device between said substrate and said cover sheet. (**Nakabayashi**, it must be noted, discloses a spacer made of sealant (viz., spacer 11)).

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**Ray et al.**, however, disclose a seal 8 (which can reasonably be viewed as being equivalent to a plurality of spacers) distributed around the periphery of an optical device. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the invention of the combination such that it further comprise a plurality of spacers distributed around the periphery of said device and supporting said cover sheet on said substrate above the element, as well as sealant extending around the periphery of said device between said substrate and said cover sheet, for at least the purpose of ensuring that said device be protected from the ambient environment in sufficiently robust manner, not only in light of the aforementioned teaching by **Nakabayashi** of a spacer made of sealant, but also in light of the well-known case law holding that the mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

**With regard to claim 4**, the polarizing element of the combination is a wire-grid polarizing element. *See* 400 in **Silverstein et al.**

3. **Claims 5-7 are rejected under 35 U.S.C. 103(a) as being over Herren et al. (6,795,260 B2).**

**Herren et al.** disclose the invention as claimed invention—[a] sealable housing (see Fig. 3: 16.1, 16.2, 16.3; 14.1, 14.2, 14.3) [it being noted that virtually every thing is sealable] for use in a sub-assembly for a display device [intended use], said sealable housing comprising top and bottom

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portions (see Fig. 3) and three face portions extending between said top and bottom portions extending between said top and bottom portions to form a wedge-shaped enclosure, said face portions comprising mounting apertures for optical elements (*id.*)—**EXCEPT FOR** explicit teachings of the following respectively recited limitations, wherein: said top and bottom portions are triangular; said three face portions are rectangular; and said top and bottom portions are right triangles each having two short sides and a long side, respectively.

It has however been held\* that the configuration of a claimed invention is a matter of choice that a person of ordinary skill in the art would have found obvious absent persuasive evidence *in the claims* that the particular configuration of the claimed invention—in this case, the triangular top and bottom portions & the rectangular face portions—had a certain criticality. In the instant case, it would have been obvious to have modified the invention of **Herren et al.** such that the top and bottom portions of the sealable housing taught therein be triangular (including right triangles) & the three face portions be rectangular, for at least the purpose of achieving a different, yet still useful, form-factor for said sealable housing. \**In re Daily*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966).

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### ***Allowable Subject Matter***

**4. Claims 8-13 are allowed.**

5. The following is an examiner's statement of reasons for allowance: The claims are allowable over the prior art for at least the reason that the prior art fails to teach or to reasonably suggest *a sub-assembly for a display device comprising a sealable housing having first, second, and third mounting apertures, a light polarizing element, said light polarizing element sealed into said first aperture, a light modulator panel sealed into said second aperture, and a lens sealed into said third aperture, as set forth in the claims combination.*

6. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."



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### ***Contact Information***

7. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Craig Curtis, whose telephone number is (571) 272-2311. The examiner can normally be reached on Monday-Friday, 9:00 A.M. to 6:00 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Drew A. Dunn, can be reached at (571) 272-2312. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

C.H.C.  
Craig H. Curtis  
Group Art Unit 2872  
16 November 2004



**DREW A. DUNN**  
**SUPERVISORY PATENT EXAMINER**